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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th June 2009

No. 5124—li/1(BH)-48/1998 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th April 2009 in Industrial Dispute Case No. 189/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the General Manager Utkal Asbestos Ltd., At. Korian, Post/Dist. Dhenkanal and its workmen represented through the General Secretary, Utkal Asbestos Progressive Employees Union, P.O./Dist. Dhenkanal, General Secretary Utkal Asbestos Shramik Congress Union, At-Station Road, P.O./Dist. Dhenkanal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE
IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 189 OF 2008
Dated the 30th April 2009

Present :

Shri P. C. Mishra, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal, Bhubaneswar.

Between :

The General Manager, .. First Party—Management
M/s. Utkal Asbestos Ltd.,
At-Korian, Post/Dist. Dhenkanal.

And

Its workmen Represented through .. Second Party—Workman
The General Secretary, Utkal Asbestos
Progressive Employees Union,
At-Korian, P.O./Dist. Dhenkanal.
The General Secretary,
Utkal Asbestos Shramik Congress Union,
At-Station Road, P.O./Dist. Dhenkanal,
Orissa.

Appearances :

Shri S. Das, Advocate.	..	For the first Party —Management
Shri S. Mohanty, Advocate	..	For the Second Party—Union No. 1
Shri B. Samal, Authorised Representative.	..	For the Second Party—Union No. 2

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 4398-li/1(BH)-44/1998-LE., dated the 31st March 1999 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138-li/21-32/2007-LE., dated the 4th April 2008 :—

“Whether the action of the Management of Utkal Asbestos Ltd., Dhenkanal in declaring lockout on and from the 5th July 1998 vide Order No. 1 dated the 5th July 1998 is legal and/or justified ? If not, to what relief the workmen are entitled to ?”

2. The second party workmen involved in the dispute are being represented through two Unions, namely, Utkal Asbestos Progressive Employees Union (for short ‘Employees’ Union) and Utkal Asbestos Shramik Congress Union (for short ‘Shramik Congress Union’).

It is the case of the Employees Union that it submitted a charter of demands on the 17th October 1994 claiming revision of scale of pay of the workman along with other benefits but without considering the genuine demands at the instance of the management another union was formed, namely, Shramik Congress Union which also submitted a charter of demands like the Employees Union. While the matter was pending conciliation, it is alleged that the conciliation Officer being influenced by the management executed a settlement with the minority union, i.e., Shramik Congress Union. Then the Employees Union approached the Hon’ble Court which directed that if any settlement will be made it will be subject to the decision of the Writ Application. It is stated that ultimately the Hon’ble Court directed to finalise the conciliation proceeding which was initiated on the charter of demands submitted by the Employees Union. It is alleged that while the conciliation was pending, the management brought some false allegation about indiscipline and low production in the factory and subsequently declared lockout of the factory w.e.f. the 5th July 1998 in a most whimsical manner without following the provisions of law. It is stated that when the Labour machinery intervened to bringout a settlement in the matter the management put certain conditions for lifting the lockout and ultimately when the Employees Union preferred a Writ Application in the Hon’ble Court the management lifted the lockout on the 21st October 1998 and directed the workmen to resume their duties. It is alleged that the reasons for clamping the lockout are all false, vague and baseless and is designed with a motive to suppress the legitimate grievance of the workmen. It is further alleged that the slowdown of production was shown artificially with a view to declare lockout of the factory and therefore, the same is illegal as well as unjustified and the workmen are entitled to full wages and all the consequential benefits for the said period.

The case of the other union, namely, Shramik Congress Union, in brief is that their Union having majority support of the workmen signed a tripartite settlement with the management on the 29th March 1996 which was valid and operative till the 31st March 1999. It is stated

that on the 17th April 1998 the management informed that as because some workers did not attend to their duties the production hampered and their union when came forward to resolve the issue, the workmen belonging to the Employees Union intervened as a result no resolution could be effected. It is specifically alleged that although the indiscipline was created by the Employees Union, the management with an ill-intention highlighted the issue against all the workmen in general. It is stated that while the matter stood thus, suddenly the management declared lockout of the factory on the 5th July 1998 basing on false allegations against the members of the Shramik Congress Union. It is stated that on the complaint of the Shramik Congress Union conciliation was takenup which ultimately failed culminating the present reference. At a later stage, on the 21st October 1998, it is stated, the management lifted the lockout but did not pay any wages to the workers for the period of lockout i.e., from the 5th July 1998 to the 21st October 1998, which was clamped in a whimsical manner and is otherwise illegal and unjustified. In the premises, therefore, the Shramik Congress Union has prayed for to answer the reference in its favour.

3. The management entered contest and filed its written statement stating therein *inter alia* that the lockout was imposed out of sheer compulsion because of continuous go slow for nearly two and half months followed by illegal stoppage of work from the 27th June 1998 to the 4th July 1998 and added to that there was refusal to carry out the instructions of the supervisory staff and threatening them with dire consequences etc. before lockout. It is stated that during subsistence of a tripartite settlement which was binding till the 31st March 1999, such an unlawful method was adopted by the workmen compelling the management to declare lockout. It is stated in the written statement that when there was concerted illegal strike and the entire body of workmen supported such illegal acts of go slow and stoppage of work compelling the management to declare lockout of the factory, it would be unjust and inappropriate to give benefit of idle wages to the workmen for the period from the 5th July 1998 to the 21st October 1998, as claimed.

4. On the basis of the pleadings of the parties, the only issue that has been framed in the case is —

ISSUES

(i) "Whether the action of the management of M/s. Utkal Asbestos Ltd., Korian, Dhenkanal in declaring lockout on and from the 5th July 1998 vide Order No. 1 dated the 5th July 1998 is legal and/or justified ? If not, to what relief the workmen are entitled ?"

5. In order to substantiate their stand, the Employees Union has examined two witnesses and has proved documents which have been marked Exts. 1 to 8. The other Union, namely, Shramik Congress Union examined one witness on its behalf but did not adduce any documentary evidence. The management, on the other hand, examined its Assistant Works Manager to be its sole witness and proved as many as 29 documents which have been marked as Exts. A to L.

6. In view of the rival contention of the parties, it is to be seen whether prior to declaration of lockout i.e., the 5th July 1998 there was a completely go slow/stoppage of work resorted to by the workmen compelling the management to clamp lockout of the factory w.e.f. the 5th July 1998, as claimed by the management or it was declared in a whimsical/arbitrary manner to avoid the genuine demands of the workmen made in their charter of demands dated the 17th October 1994.

In connection with the above, it is pertinent to refer to the tripartite settlement entered into between the parties on dated the 29th March 1996, marked Ext. 1, wherein it is mentioned that on expiry of the earlier settlement dated the 18th June 1992 the parties entered into a fresh settlement as per Ext. A keeping in view the 15 point charter of demands submitted by the Shramik Congress Union on dated the 25th April 1994 and it was agreed therein that the terms and conditions stipulated in the settlement shall be binding on the parties from the date of its commencement i.e. from the 1st April 1996 till 31st March 1999. It was stipulated in Clause (j) and (k) of the General Provisions of the said settlement that :—

- (j) The union further undertakes that they will thrive hard in reducing unnecessary absenteeism in the Mill. In case of any deliberate defaulter the Union made it clear not to interfere on the action of the management initiated thereof.
- (k) The Union further agreed that they will not initiate, authorise, sanction, support or engage in any strike, stoppage of work or slowing down of production in any manner during the tenure of this settlement.

In the aforesaid background therefore it is now to be examined on the basis of evidence available on record as to whether the workmen violating the stipulations embodied in the settlement, Ext. A had adopted go slow/stoppage of work in the factory compelling the management to declare lockout.

Explaining about 'wilful go slow' the Hon'ble High Court of Madras in P. J. Gangadaran Vs. Presiding Officer, IIInd Addl. Labour Court, reported in 1996 (II) LLJ at page-1234 have held that "from the circumstances alone wilfulness has to be inferred, what is in the mind of a person cannot be seen, but it has got to be observed or presumed from the conduct of a person with reference to a particular act or incident." In the light of the observations of the High Court of Madras the evidence adduced by the parties is to be looked into to resolve the present dispute.

In their evidence the witnesses examined on behalf of the Unions have absolutely denied the alleged fact of adopting go slow/stoppage of work or exhibiting any type of indiscipline prior to imposition of lockout but at the same time it reveals from their evidence that there was intra Union rivalry between the members of the two Unions. On the other hand, the management has adduced evidence through M. W. No. 1, who has proved Ext. D which discloses that for loss of production there was a meeting held on the 24th April 1998 in the Office of the Sub-Collector, Dhenkanal wherein both the Union's representatives participated. He has also proved Ext. F, a copy of the notice dated the 17th April 1998 requesting the workers not to indulge in stoppage of work, Exts. F/1 to F/4, the copies of the notices wherein the management expressed its displeasure for substantial reduction in production, Ext. E, the copy of the letter of the District Labour Officer, Dhenkanal requesting the representatives of the Unions to maintain normalcy in production, Ext. C, the copy of the letter of the Asst. Labour Commissioner, Angul advising the Unions to impress upon its members to restore normalcy, Exts. G to G/5, G/11 and G/12, the copies of letters addressed to some employees asking them to show-cause for dereliction in their duties, Exts. G/6 to G/10, the copies of letters addressed to the workmen intimating that on account of their taking leave the production had gone down resulting heavy financial losses to the company and Exts. H and K, the lockout notice dated the 5th July 1998 displayed by the management both in English and Oriya respectively.

On a close scrutiny of the documents as referred to by M.W. No. 1, it is apparently clear that the workers of the factory had adopted the tactics of go slow/stoppage of work and were involved in indiscipline attitude for which the Labour machineries as well as the district administrative authorities requested the representatives of the Unions to refrain from such activities but when the workers did not restore normalcy knowing fully well that the tripartite settlement, Ext. A was operative during the period, the management had taken recourse to the provisions of Section 24 (3) of the Industrial Disputes Act and imposed lockout of the factory w.e.f. the 5th July 1998. In the circumstances, therefore, the imposition of lockout cannot be said to be either illegal or unjustified.

7. It was contended on behalf of the Unions that due to non-production of the Production Register and Despatch Register where from the reduction in production could have been ascertained, the plea taken by the management that for the indiscipline attitude and go slow tactics adopted by the workers it imposed the lockout cannot be believed. The aforesaid argument advanced by the Unions is of no help to it as because the documentary evidence adduced by the management is suffice to hold that there was a concerted move to adopt go slow/stoppage of work in the factory prior to clamping of the lockout on the 5th July 1998. Hence, it is held that the management is justified in declaring lockout of the factory w.e.f. the 5th July 1998 and further the management having taken recourse to the provisions of Section 24(3) of the Industrial Disputes Act while imposing such lockout, the same is also held to be legal.

8. In view of the discussions held in the foregoing paragraphs, the lockout being held to be legal as well as justified, the workmen are not entitled to any relief for the period the factory remained under lockout.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
30-4-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
30-4-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
K. C. BASKE
Under-Secretary to Government